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STATE OF WASHINGTON

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SUPREME COURT
OF THE STATE OF WASHINGTON

JUSTIN ENDICOTT, an individual,

Respondent,

v.

ICICLE SEAFOODS, INC., an Alaska
corporation,

Appellant.

NO. 82635-8

SECOND
SUPPLEMENTAL
STATEMENT OF
ADDITIONAL
AUTHORITIES

COMES NOW the respondent Justin Endicott and submits the following additional authorities to the Court, in response to questions during oral argument, pursuant to RAP 10.8:

- *Fitzgerald v. United States Lines Co.*, 374 U.S. 16, 83 S. Ct. 1646, 10 L.Ed.2d 720 (1963) (in response to question from Justice Stephens, injured seaman has the right to make election for a jury trial on mixed Jones Act/maritime claims);
- *Lackey v. Atlantic Richfield Co.*, 990 F.2d 202 (5th Cir. 1993) (in response to question from Justice Sanders, state court Jones Act case is generally not subject to removal to federal court under 28 U.S.C. §1445 barring removal of FELA cases in state court);
- 46 U.S.C. § 30104 ("A seaman injured in the course of employment or, if the seaman dies from the injury, the personal representative of the seaman may elect to bring a civil action at law, with the right of trial by jury, against the employer. Laws of the United States regulating recovery for personal injury to, or death of, a railway employee apply to an action under this section.");

Second Supplemental Statement of
Additional Authorities - 1

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FILED AS
ATTACHMENT TO EMAIL

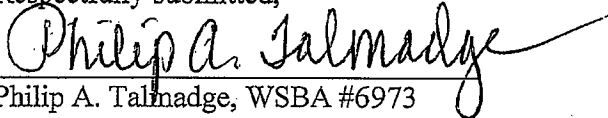
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- *Panama R. Co. v. Johnson*, 264 U.S. 375, 391, 44 S. Ct. 391, 68 L.Ed. 748 (1924) (in response to questions from several justices, while the language of the Jones Act itself does not speak to the defendant's right to invoke trial by jury, the United States Supreme Court upholds the constitutionality of the Jones Act and its determination that only the injured seaman may make the election; the Court focused on "the object of the suit rather than the jurisdiction in which it is brought.");
- *Rachal v. Ingram Corp.*, 795 F.2d 1210, 1213, 1215 (5th Cir. 1986) (the plaintiff's jury trial right exists by virtue of a statutory grant in the Jones Act; the Act gives the right to choose jury trial only to seaman-plaintiff);
- *Linton v. Great Lakes Dredge and Dock Co.*, 964 F.2d 1480, 1490 (5th Cir. 1992) (under Jones Act, seaman can ground suit in federal court on federal question jurisdiction and not request a jury);
- *Craig v. Atlantic Richfield Co.*, 19 F.3d 472, 476 (9th Cir. 1994) (the court indicates that plain language of the Jones Act gives the plaintiff "the option of maintaining an action at law with the accompanying right to a jury trial. The Act makes no mention of a defendant.");
- Brief of Appellant at 12, reply brief at 4, answer to IBU Amicus Brief at 3 (Icicle acknowledges that in a diversity case, a defendant may elect a right to trial by jury; Icicle has never argued in this case in any of its briefing until oral argument before this Court that this was a diversity case);
- *Dice v. Akron C.P. & Y.R. Co.*, 342 U.S. 359, 72 S. Ct. 312, 96 L.Ed.2d 398 (1952) (the right to trial by jury is too substantial a part of the rights accorded by FELA to permit it to be classified as a mere local procedural rule);
- Brief of Appellant at 31 (Icicle concedes that the Jones Act expressly incorporates FELA by reference);

- *Seattle School Dist. No. 1 v. Dep't of Labor & Indus.*, 116 Wn.2d 352, 804 P.2d 621 (1991) (in response to a question from Justice James Johnson, RCW 51.52.130 allows only injured workers in industrial insurance cases to recover attorney fees);
- RCW 19.86.080 (only person injured under CPA may recover attorney fees).

DATED this 6th day of October, 2009.

Respectfully submitted,



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DECLARATION OF SERVICE

On this day said forth below, I emailed and deposited with the U.S. Postal Service a true and accurate copy of: Second Supplemental Statement of Additional Authorities in Supreme Court Cause No. 82635-8 to the following parties:

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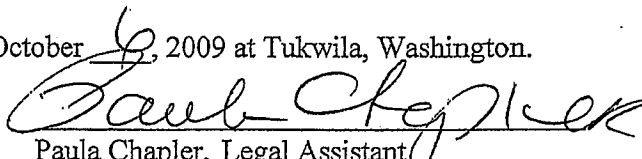
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Original sent by email for filing with:
Washington Supreme Court
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415 12th St W
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: October 6, 2009 at Tukwila, Washington.


Paula Chapler, Legal Assistant
Talmadge/Fitzpatrick

DECLARATION

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To: Paula Chapler
Subject: RE: Endicott v. Icicle Seafoods

Rec. 10-6-09

From: Paula Chapler [mailto:paula@tal-fitzlaw.com]
Sent: Tuesday, October 06, 2009 4:26 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Endicott v. Icicle Seafoods

Per Mr. Talmadge's request, please see the attached Second Supplemental Statement of Additional Authorities for filing in the following case:

Case Name: Justin Endicott v. Icicle Seafoods, Inc.
Cause No. 82635-8
Attorney: Philip A. Talmadge, WSBA #6973
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Sincerely,

Paula Chapler
Legal Assistant
Talmadge/Fitzpatrick